## UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development,	) ) )
Charging Party, on behalf of	) ) )
v.	) FHEO No. 02-09-0904-8
40 West 75 <sup>th</sup> Street, LLC.,	)
Respondent.	) ) _)

# **CHARGE OF DISCRIMINATION**

## **JURISDICTION**

On or about July 29, 2009, ("Complainant") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD"). Complainant, who is handicapped, alleged that her landlord, 40 West 75<sup>th</sup> Street LLC ("Respondent"), refused to grant her request for a reasonable accommodation in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq. ("Act"). In particular, Complainant alleged that she required an emotional support service dog and Respondent refused to allow her to retain such a dog in her apartment. Complainant also alleged that Respondent commenced eviction proceedings because she refused to remove the dog from her apartment.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of an aggrieved person following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (1) and (2). The Secretary has delegated to the General Counsel (24 C.F.R. § 103.400 (a)(2)(i), 103.405), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441- 68442) (Nov. 18, 2008), the authority to issue such a Charge, following a determination of reasonable cause.

The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaint was unsuccessful. See 42 U.S.C. § 3610(b).

# LEGAL AUTHORITY IN SUPPORT OF CHARGE

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a handicap of that person. 42 U.S.C. § 3604(f) (2) (A). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a handicap equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f) (3) (B).

#### **PARTIES**

- 4. Complainant suffers from Depression and Dysthymic and General Anxiety Disorder. Because of her depression and anxiety, Complainant has difficulty with the activities of daily living, socializing and sleeping.
- 5. Complainant is a person with a handicap within the meaning of the Act. 42 U.S.C. § 3602(h).
- 6. Respondent 40 West 75<sup>th</sup> Street LLC is the owner of a 10-unit apartment building located at 40 West 75<sup>th</sup> Street, New York, NY 10023.

# **FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE**

- 7. Complainant resides in located at 40 West 75<sup>th</sup> Street, New York, NY, a multi-family apartment building owned and operated by Respondent.
- 8. The lease for Complainant's apartment contains a clause prohibiting "dogs, cats or other animals or pets."
- 9. Complainant's apartment is a "dwelling" within the meaning of the Act. 42 U.S.C. § 3602 (b).
- 10. Complainant has suffered from chronic, recurrent depression since 2006. Beginning February 11, 2009, , M.D. began treating Complainant for her depression.
- 11. From about 1991 until March of 2009, Complainant was employed by a non-profit, social services and philanthropic organization, the of New York. In March 2009, was compelled by financial considerations to "down-size" its work force and consequently Complainant's employment was terminated. As a result of her termination, Complainant's depression significantly increased.
- 12. Soon after her employment with the ended, Complainant notified Respondent that her husband would be moving in with her. Complainant also told

Respondent about the emotional devastation she was experiencing and requested that she be permitted to have their dog Scooter, a 16 pound West Highland Terrier, live in her apartment as a reasonable accommodation.

- 13. Although Complainant informed Respondent that she felt that she could not survive without the emotional support Scooter provided, Respondent denied Complainant's reasonable accommodation request.
- 14. On or about March 30, 2009, Complainant's husband moved into her apartment with Scooter.
- By letter dated April 28, 2009, the New York City Department of Health and Mental Hygiene informed Complainant her "dog has been registered and listed as a Service Dog in [the] New York City Department of Health & Mental Hygiene['s] (NYCDOHMH) database."
- 16. In June 2009, Respondent served Complainant with a Ten Day Notice to Cure, informing Complainant that her tenancy would terminate on June 29, 2009, unless she removed Scooter from her apartment.
- 17. By letter dated June 17, 2009, Complainant's attorney Karen Copeland, responding to the Notice To Cure, informed Respondent, among other things, that (1) Scooter was registered as a service dog with the City of New York Department of Health Office of Veterinary Services; (2) Complainant suffers from chronic depression; and (3) Complainant requests a reasonable accommodation to retain Scooter in her home as an emotional support animal.
- 18. Along with her letter, Ms. Copeland enclosed a letter, dated March 31, 2009, from Complainant's psychiatrist, Dr. . Dr. verified that he was treating Complainant for depression and an important part of her therapy environmentally was the love and affection of her dog. Dr. Graham concluded that it is an "important medical necessity for her to have the animal with her and her husband in her apartment."
- 19. Despite Complainant's request to retain Scooter as a reasonable accommodation, supported by a psychiatrist's verification that Scooter was an "important medical necessity," Respondent has refused to permit Scooter to remain in Complainant's apartment.
- 20. Because Respondent has failed to grant Complainant a reasonable accommodation and threatened to evict her, Complainant has suffered from severe anxiety, distress and depression.

## **FAIR HOUSING ACT VIOLATIONS**

21. Respondent has violated the Act because it has discriminated against Complainant in the terms, conditions or privileges of a sale of a dwelling, or in the provision of services or facilities in connection with such a dwelling, by refusing to make a reasonable accommodation in its rules, policies, practices, or services, when such an accommodation was necessary to afford Complainant equal opportunity to use and enjoy her dwelling. 42 U.S.C. § 3604 (f)(2)(A) and (f)(3)(B); 24 C.F.R. § 100.204.

### **CONCLUSIONS**

WHEREFORE, the Secretary of HUD, through the office of the General Counsel, and pursuant to 42 U.S.C. § 3610 (g) (2) (A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604 (f)(2) (A), and (f)(3)(B) and prays that an order be issued that:

- 1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
- 2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of handicap status against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);
- 3. Awards such damages pursuant to 42 U.S.C. §3612(g)(3) as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
- 4. Awards a civil penalty in the amount of \$16,000 against Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g) (3); and
- 5. Awards such additional relief as may be appropriate under 42 U.S.C. §3612(g) (3).

Respectfully submitted,

1. Cahill

ohn J. Cahill

Regional Counsel for New York/New Jersey

lenry Schoenfeld

Associate Regional Counsel

Iris Springer-Likerson

Trial Attorney

Office of Regional Counsel U.S. Department of Housing and Urban Development 26 Federal Plaza, Room 3500 New York, New York 10278-0068 (212) 542-7208

Date: April 7, 2010